

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

NAVIGATOR HEARTLAND
GREENWAY, LLC,

Plaintiff,

v.

IOWA UTILITIES BOARD,

Defendant.

CASE NO. _____

**PETITION FOR TEMPORARY AND
PERMANENT INJUNCTIVE RELIEF**

COMES NOW the Plaintiff, Navigator Heartland Greenway, LLC (“Navigator”), through its undersigned counsel, and hereby submits this Petition for Temporary and Permanent Injunctive Relief, stating in support thereof as follows:

PARTIES AND JURISDICTION

1. Navigator is a “pipeline company” within the meaning of Iowa Code Chapter 479B that developed a proposal to build and operate a large-scale carbon capture pipeline system in Iowa, which is currently pending before the Iowa Utilities Board, Docket No. HLP-2021-0003.¹

2. Navigator, a limited liability company formed under the laws of the state of Delaware, is a foreign business entity authorized to transact business in Iowa.

3. The Iowa Utilities Board (the “IUB” or “Board”) is a division of the Department of Commerce of the State of Iowa created and governed by Iowa Code chapter 474.

4. The Board is a government body within the meaning of Iowa Code chapter 22, Iowa’s Open Records Act.

5. This Court has subject-matter jurisdiction over this action.

¹ See Iowa Utilities Board, *In re: Navigator Heartland Greenway LLC*, Docket No. HLP-2021-0003, available at <https://efs.iowa.gov/efs/ShowDocketSummary.do?docketNumber=HLP-2021-0003>.

BACKGROUND

6. In Iowa, the IUB has primary jurisdiction over the routing-siting of hazardous liquids pipelines in Iowa, and a company proposing to build a hazardous liquid pipeline must obtain a permit from the IUB under Iowa Code chapter 479B.

7. Pursuant to Iowa Code chapter 479B and the Board's administrative rules implementing the statute, 199 Iowa Admin. Code ch. 13, the first step in seeking a permit for carbon capture infrastructure project of this nature is to hold a public informational meeting in each county where the pipeline is proposed to be constructed and operated, and notice of the meetings must be sent via certified mail to "persons as listed on the tax assessment rolls as responsible for payment of real estate taxes imposed on the property and those persons in possession of or residing on the property in the corridor in which the pipeline company intends to seek easements." 199 Iowa Admin. Code 13.2(5) (implementing Iowa Code § 479B.4).

8. Notably, however, nothing in the statute nor the rules requires or contemplates the filing of the list of persons on which the mailing was based to be filed with the Board.

9. Navigator has developed a proposal to build and operate a large-scale carbon capture pipeline system spanning approximately 1,300 miles across five states in the Midwest that will capture carbon dioxide from local facilities before it reaches the atmosphere, convert it to a liquid form, and transport it via pipeline to a permanent underground sequestration site and/or off-take facilities in Iowa for commercial/industrial use.

10. This pipeline system, called or generally referred to as Heartland Greenway Project, will be capable of transporting liquefied carbon dioxide from initial receipt points at emissions capture facilities in Iowa, Illinois, Minnesota, Nebraska, and South Dakota to an initial sequestration site identified in Illinois and off-take facilities in Iowa.

11. The Heartland Greenway Project is a forward-thinking, scalable infrastructure investment that will materially reduce participants' carbon footprint and further the global goal of carbon neutrality.

12. To comply with the good-faith requirements of Iowa Administrative Code 199 - 13.2(5)(d) to locate the addresses of all affected persons on its proposed route, Navigator has taken—and is still taking—the steps described below. Overall, this process involves significant resources and goes well beyond merely obtaining a list of landowners from each county.

13. First, Navigator engaged Universal Field Services LLC (“UFS”), who obtained assessor’s office information for the parcels in the notification corridor in each of the following counties: Benton, Boone, Bremer, Buchanan, Buena Vista, Butler, Cedar, Cherokee, Clay, Clinton, Delaware, Des Moines, Dickinson, Emmet, Fayette, Floyd, Franklin, Hamilton, Hardin, Iowa, Jasper, Jefferson, Keokuk, Kossuth, Lee, Linn, Lyon, Mahaska, O’Brien, Osceola, Plymouth, Pocahontas, Polk, Poweshiek, Story, Van Buren, Wapello, Webster, and Woodbury (the “Counties”).

14. UFS obtained the information from a third party, Real Estate Portal USA, who purchases, aggregates, and distributes assessor’s office information to its clients, including UFS. Consequently, Navigator’s mailing lists are derived from lists available on a subscription-only basis.

15. After obtaining the assessor’s office information from Real Estate Portal USA, UFS performed a data gap analysis, and any parcels that had data missing were reviewed and the missing data was filled in, wherever possible, by an employee of UFS.

16. To identify the name and addresses of the persons listed on the tax assessment rolls as responsible for payment of real estate taxes for each of the parcels located within the notification

corridor in the Counties, Navigator and UFS staff subsequently reviewed the Geographic Information System (“GIS”) websites for the Counties.

17. Using the information obtained, Navigator then overlaid this tax parcel data on a map showing a proposed center of corridor for the route and selected the tax parcels in the approximate half-mile notification corridor. From these selected tax parcels, Navigator added the owner’s name and address information to the informational meeting mailing list for each county.

18. In a December 28, 2021 order, the Iowa Utilities Board held that it would “withhold from all public inspection all materials subject to such request for confidential treatment until a final ruling of the Board,” which will come “after the Polk County District Court rules on the mailing list in Docket No. HLP-2021-0001.” (Dec. 28, 2021 order, Docket No. HLP-2021-0003, at p. 2.). Navigator filed its first set of mailing lists on December 30, 2021 and its second set of mailing lists on August 22, 2022.

19. Since initial lists were filed on December 30, 2021, some of the counties (and landowners listed) are no longer affected by the project. For example, Navigator is no longer proposing to build the project in Benton, Cedar, Clinton, Iowa, Linn, and Poweshiek counties. In addition, in certain other counties, the corridor was updated from the first set of lists to the second to include additional landowners. Beyond project-based revisions, the lists are continually updated and revised to include any new information, including information that that is typically not readily available from an assessor’s office, such as information about tenants or persons in possession. Thus, when filed with the Iowa Utilities Board, the lists reflect the corridor as of the date and time of filing and many of the individuals listed may never be affected by the project.

20. To date, Navigator estimates it has expended approximately \$3.67 million to develop, update, and maintain the landowner lists for the corridor.

21. Navigator has strategically determined a project corridor that it believes serves interested customers, maximizes the collective benefit, and minimizes the collective impact of the line. Navigator's corridor and resulting mailing lists are kept confidential on purpose and utilized for sending notices to landowners. Specifically, to date Navigator has used the mailing lists to send the required notice of informational meetings and has sent and anticipates sending survey notices utilizing the same lists.

22. While Navigator desires to obtain 100% voluntary easements for the project, in the event it needs to seek eminent domain, detailed information for each potential parcel over which eminent domain is sought—including the landowner's name and address—will be filed publicly with the Iowa Utilities Board in accordance with Iowa Administrative Code 199 - 13.3(1)(h).

23. At least one other carbon capture pipeline project is proposing to build its pipeline in many of the same counties that Navigator's project will be located. If Navigator's mailings lists, from which its project corridor can be discerned, are not kept confidential any competing pipeline project or any other person could use that information to Navigator's detriment, causing Navigator competitive and commercial harm.

24. To date, Navigator's lists involve over 16,000 records, reflecting the personal information of the owner, tenants, or persons in possession, of each parcel in the notice corridor across 39 Iowa counties, and the affected persons in Navigator's mailing lists have not been given the opportunity to opt out of the potential disclosure of their personal information.

25. At the informational meetings held to date for the Navigator project, individuals spoke to, shared information with, and obtained contact information from other attendees. There are also websites and social media sites that enable individuals opposed to carbon capture

pipelines, including Navigator's Heartland Greenway project, to connect and participate in efforts to oppose the project.

26. Navigator treats its mailing lists as proprietary, trade secret, and commercially sensitive information which, if released, would give an advantage to competitors and serve no public purpose.

27. The mailing lists also constitute reports submitted to governmental agencies that could give advantage to competitors and serves no public purpose.

28. The mailing lists requested constitute a trade secret and a report to a government agency, the release of which would serve no public purpose.

29. The disclosure of Navigator's mailing lists would disclose and divulge the company's confidential trade secrets and would cause irreparable injury to Navigator for which there is no adequate remedy at law.

30. The IUB has notified Navigator that the IUB recently received an Open Records request for production of Navigator's mailing lists.

31. Disclosure of Navigator's mailing lists is prohibited by Iowa Code Chapter 22, and disclosure must be prevented.

COUNT I
TEMPORARY AND PERMANENT INJUNCTION

32. Navigator repleads and realleges each of the preceding allegations.

33. The Iowa Open Records Act, including its exceptions, may be enforced by injunction.

34. Navigator requests a temporary and permanent injunction prohibiting the Board from releasing Navigator's mailing lists.

35. The mailing lists are a trade secret and, thus, exempt from public examination under Iowa Code 22.7(3).

36. The mailing lists are a report to a government agency, the release of which would serve no public purpose, and, thus, exempt from public examination under Iowa Code 22.7(6).

37. An injunction should be issued under Iowa Code § 22.8 because public examination of the mailing lists would clearly not be in the public interest and would substantially and irreparably injure any person or persons.

38. In support of this Petition and the requests herein, Navigator hereby submits the Affidavit of Monica Howard, attached hereto as Exhibit 1.

39. Navigator is likely to succeed on the merits of its claims and the balance of harms favors issuing a temporary and permanent injunction.

40. No petition for the same relief of part of it has previously been presented to and refused by any court or justice.

41. Navigator requests a hearing on this matter and that the Court, as permitted by Iowa Code § 22.8(2), waive any bond requirement for any injunction.

WHEREFORE, Plaintiff Navigator Heartland Greenway, LLC respectfully requests the Court immediately enter a temporary and ultimately a permanent injunction prohibiting the Board from releasing the mailing lists noted herein, and for such other and further relief as the Court deems just and appropriate under the circumstances.

Respectfully submitted,

/s/ Brian P. Rickert

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ATTORNEYS FOR PLAINTIFF NAVIGATOR
HEARTLAND GREENWAY, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 7, 2022, I electronically filed the foregoing with the Clerk of Court by using the Electronic Document Management System, a copy of which will be electronically served upon all counsel of record registered with EDMS via Notice of Electronic Filing or Presentation.

/s/ Brooke E. Johnson, Legal Assistant